

## COMMON INTEREST COMMUNITY BOARD

### MINUTES OF MEETING

The Common Interest Community Board met on Thursday, June 9, 2011, at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2<sup>nd</sup> Floor, Board Room 4, Richmond, Virginia 23233.

The following members were present:

F. James Ahlberg  
Pamela Coerse  
Ronda S. DeSplinter  
Kimberly B. Kacani, Vice Chair  
Milton W. Matthews  
Christiaan Melson  
Douglas Rogers  
Lucia Anna Trigiani, Chair  
Katherine Waddell (arrived at 10:27 a.m.)

Board members Scott Sterling and Miyun Sung were not in attendance.

DPOR staff present for all or part of the meeting included:

Gordon Dixon, Director  
Mark N. Courtney, Deputy Director of LRD  
Nick Christner, Deputy Director of CID  
Trisha L. Henshaw, Executive Director  
Heather Gillespie, Ombudsman  
Doug Schroder, Director of Adjudication  
Ann-Marie Brigil, Hearing Officer  
Thomas K. Perry, Property Registration Administrator  
Betty C. Jones, Administrative Assistant  
Earlyne Perkins, Legal Analyst

Steven Jack from the Office of the Attorney General was present.

Finding a quorum of the Board present, Ms. Trigiani, Chair, called the meeting to order at 9:37 a.m. **Call to Order**

Mr. Rogers moved to approve the revised agenda. Ms. Coerse seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, and Trigiani. **Approval of Agenda**

Ms. Kacani moved that the Board approve the minutes of the March 10, **Approval of**

2011, meeting. Ms. DeSplinter seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, and Trigiani. **Minutes**

Ms. Coerse moved that the Board approve the minutes of the following meetings:

- April 8, 2011, Fair Housing Training Meeting
- April 11, 2011, Condominium Regulatory Review Committee Meeting
- April 13, 2011, Informal Fact Finding Conference
- June 6, 2011, Condominium Regulatory Review Committee Meeting

Mr. Ahlberg seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, and Trigiani.

Ms. Trigiani opened the floor for public comment. No members of the public present requested to speak. **Public Comment Period**

Ms. Coerse recused herself from the meeting due to her professional relationship with the respondent.

**Regarding File Number 2010-04291, Alexander Properties, Inc.,** the Board members reviewed the record of the Informal Fact-Finding Conference, which consisted of the investigative file, transcript and exhibits, and the Summary of the Informal Fact-Finding Conference, as well as the recommendation of the presiding officer. Wayne Alexander, president of Alexander Properties, Inc., was present and addressed the Board. Mr. Alexander stated that Jay Fulk was no longer with Alexander Properties, Inc., and that Mr. Alexander was not aware of the Board's actions against Alexander Properties, Inc., nor Mr. Fulk's activities related to compliance with the consent order and accompanying cease and desist order entered by the Board on July 9, 2010. Mr. Alexander stated that, while his company does not have a great deal of money, he wanted to cooperate with the Board and to resolve these problems. Mr. Alexander indicated that his health problems led to him foolishly leaving operation of Alexander Properties, Inc., in the hands of Mr. Fulk. **File Number 2010-04291, Alexander Properties, Inc.**

At 9:56 a.m., Ms. Kacani moved that the Board meeting be recessed and that the Board immediately reconvene in closed meeting for the purpose of deliberation on disciplinary cases resulting from Informal or Formal Hearings in order to reach a decision as permitted by § 2.2-3711.A.28 of **Closed Meeting**

the Code of Virginia. The following non-members were in attendance to reasonably aid the consideration of the topic: Gordon Dixon, Mark Courtney, Steven Jack, and Trisha Henshaw.

The motion was made with respect to the matter identified as agenda item: V. Review Files, File Number 2010-04291, Alexander Properties, Inc. Mr. Matthews seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Matthews, Melson, Rogers, and Trigiani.

At 10:23 a.m., Mr. Melson moved that the Board adjourn the closed meeting and immediately reconvene in open session. Mr. Rogers seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Matthews, Melson, Rogers, and Trigiani. **Open Meeting**

#### **CERTIFICATION OF CLOSED MEETING**

**WHEREAS**, the Common Interest Community Board has convened a closed meeting on this date pursuant to an affirmative recorded vote in accordance with the provisions of the Virginia Freedom of Information Act; and

**WHEREAS**, § 2.2-3712 of the *Code of Virginia* requires a certification by this Common Interest Community Board that such closed meeting was conducted in conformity with Virginia law;

**NOW, THEREFORE, BE IT RESOLVED** that the Common Interest Community Board hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies and, (ii) only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Common Interest Community Board.

**VOTE:** 7-0-1-3

**AYES:** Ahlberg, DeSplinter, Kacani, Melson, Matthews, Rogers, and Trigiani.

**NAYS:** None.

**ABSENT DURING THE VOTE:** Coerse

**ABSENT DURING THE MEETING:** Sterling, Sung, and Waddell.

Mr. Matthews made a motion to accept the recommendation of the presiding officer and find that Alexander Properties, Inc. willfully failed to comply with the terms of the cease and desist order entered by the Board on July 9, 2010, by the deadline of December 31, 2010, constituting a breach of the Order pursuant to § 55-396 F of the Code of Virginia. Ms. Kacani seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Matthews, Melson, Rogers, and Trigiani.

Ms. Kacani made a motion to revoke registration number 0515960001 in the name of Creekside Village Time-Share, Alexander Properties, Inc. Mr. Melson seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Matthews, Melson, Rogers, and Trigiani. Ms. Coerse was not present during the discussion or vote.

At 10:27 a.m., Ms. Coerse returned and Ms. Waddell arrived at the meeting.

**Arrival of Board Member**

Ms. Henshaw gave an update on the current status of the regulatory review processes for several of the Board's regulatory packages.

**Update on Regulatory Review Processes**

- **Common Interest Community Ombudsman Regulations:**  
Later in the Board meeting, the Board will review and adopt responses to public comments received during the public comment period. In addition, the Board is expected to adopt the text of the regulations as final. Upon completion of the executive branch review process, the final regulations will be published and followed by a 30-day public comment period before becoming effective.
- **Common Interest Community Manager Regulations:**  
Later in the Board meeting, the Board will review and adopt responses to public comments received during the public comment period. In addition, the Board is expected to adopt the text of the regulations as final. Upon completion of the executive branch review process, the final regulations will be published and followed by a 30-day public comment period before becoming effective.
- **Condominium Regulations:**  
The Notice of Intended Regulatory Action (NOIRA) for the general review of the regulations has been published and the 30-day public comment period ends on July 6, 2011. The Condominium Regulatory Review Committee is reviewing and

amending the text, as appropriate, for a final recommendation to be presented to the Board.

- **Condominium Regulations:**

Provisions governing the return of bonds and letters of credit which were promulgated via the fast-track process in 2010, became effective April 1, 2011.

Ms. Henshaw provided an updated timeline for the work of the Condominium Regulatory Review Committee, which has been charged by the Board with performing a detailed review of the Condominium Regulations. Ms. Henshaw stated that while additions and deletions to Committee meeting dates and topic areas may be made as necessary, the Board must be presented with the final recommendation of the Committee at the December 1, 2011, Board meeting in order to meet the deadline related to filing of the proposed regulations.

Mr. Melson, as Chair of the Condominium Regulatory Review Committee, provided an update on the progress of the Committee. The first meeting was held on April 11, 2011 and consisted primarily of training on the regulatory review process as well as developing a plan to accomplish the Committee's task. The next meeting was held on June 6, at which time the Committee began reviewing in detail sections pertaining to the public offering statement requirements. The next two meetings are scheduled for July 28 and September 13, with additional meetings to be added if necessary.

The Board members were provided with the public comments for the Common Interest Community Board Manager Regulations, as well as a draft of the Board's response for each comment. The comments were received during the public comment period of January 17, 2011, to March 18, 2011. After review and discussion, Ms. Kacani moved to adopt the draft responses as amended. Ms. Waddell seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell.

After amending the proposed regulations pursuant to comments received, Ms. Kacani made a motion to approve the Common Interest Community Board Manager Regulations as final regulations and to authorize staff, in consultation with the Board chair, to make any minor changes necessary to gain the approval of the final regulations during executive branch review. Ms. Coerse seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell.

**Update from  
Condominium  
Regulatory Review  
Committee**

**CIC Manager  
Regulations -  
Review Summary of  
Public  
Comments and  
Adopt Board  
Response**

**Adopt Final CIC  
Manager  
Regulations**

The Board recessed for a break at 11:25 a.m. and reconvened at 11:47 a.m.

**Break**

The Board members were provided with the public comments for the Common Interest Community Ombudsman Regulations, as well as a draft of the Board's response for each comment. The comments were received during the public comment period of January 17, 2011, to March 18, 2011.

**CIC Ombudsman  
Regulations -  
Review  
Summary of Public  
Comments and  
Adopt Board  
Response**

A recurring public comment concerned the provisions related to distribution of association complaint procedures. After discussion, Ms. DeSplinter moved to add "upon request" to 18 VAC 48-70-60.A and delete 18 VAC 48-70-60.B to remove the provisions regarding distribution of the complaint process. Mr. Ahlberg seconded the motion which was approved by: Ahlberg, Coerse, DeSplinter, Kacani, Rogers, and Waddell. Messrs. Matthews and Melson voted in opposition to the motion. Ms. Trigiani abstained from the motion. The motion passed with a majority vote.

The Board recessed for lunch from 12:34 p.m. to 1:07 p.m.

**Lunch**

The Board continued the review of the public comments for the Common Interest Community Board Ombudsman Regulations, as well as a draft of the Board's response for each comment. After review and discussion, Ms. Waddell moved to adopt the draft responses as amended. Mr. Matthews seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell.

**CIC Ombudsman  
Regulations –  
Review Summary of  
Public Comments  
and Adopt Board  
Response**

After amending the proposed regulations pursuant to comments received, Ms. DeSplinter made a motion to approve the Common Interest Community Board Ombudsman Regulations as final regulations and to authorize staff, in consultation with the Board chair, to make any minor changes necessary to gain the approval of the final regulations during executive branch review. Mr. Rogers seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell.

**Adopt Final CIC  
Ombudsman  
Regulations**

The Board discussed a memorandum from Ms. Henshaw regarding a request for interpretation of statutes, specifically as regarding whether a common interest community manager license is required for a company that is only responsible for the collection of past-due assessments on behalf of an association. After discussion, Mr. Matthews made a motion to respond by referencing the definition of "management services" in § 54.1-2345 of the Code of Virginia, which includes "(iii)

**Consider Request  
for Interpretation  
Regarding CIC  
Manager License  
Requirements**

collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association.” Thus, based on the current statutory language, a license would be required for an entity performing any of the functions in the definition of management services, unless an exemption in § 54.1-2347 of the Code of Virginia applied. Ms. Kacani seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell.

Ms. Henshaw gave a report of Board staff’s activities related to implementation of legislation that was passed during the 2011 General Assembly Session. Specifically, Ms. Henshaw stated that letters were mailed to all licensed managers to notify them of the extension of the provisional license until June 30, 2012, as well as the delayed implementation of the employee certification requirements until July 1, 2012. As a result of the extension of provisional licenses, all provisionally licensed managers were reminded of the requirement to submit the annual assessment fee and updates to bond and insurance information.

**Discussion of  
Legislation - Follow-  
up from 2011  
General Assembly  
Session**

Ms. Henshaw provided a memorandum with several legislative ideas for the 2012 General Assembly Session. The items presented for consideration consist of amendments intended to clarify the statutes pertinent to the Board’s programs and to amend the Condominium Act and the Time-Share Act to provide for administrative termination in the event that certain criteria has been met to warrant termination of the registration. Ms. DeSplinter made a motion to support the suggested legislative change. Ms. Coerse seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell.

**Discussion of  
Legislation –  
Preparing for 2012  
General Assembly  
Session**

Ms. Henshaw provided an update on the *Common Interests*, the Board newsletter. In the upcoming issue, there are several articles planned including updates on 2011 legislation, annual report filing requirements for time-share and condominium registrations, and information regarding various bond requirements for the Board’s programs. In addition, the newsletter will continue to feature standard articles such as disciplinary information, regulatory updates, and information from the Office of the Common Interest Community Ombudsman. The Board members were asked to submit any ideas, comments, or suggestions for the newsletter to Ms. Henshaw or Ms. Adelman.

**Update on Board  
Newsletter**

In order to achieve a summer publication date, staff anticipates completing a draft of the newsletter in early August, which will then be distributed to the Board members for comment.

After discussion, the Board moved to adopt the following 2012 Board and Training Program Committee meeting dates by consensus:

**2012 Proposed Meeting Schedule**

- March 21, 2012 – Training Program Review Committee Meeting
- March 22, 2012 – Board Meeting
  
- June 6, 2012 – Training Program Review Committee Meeting
- June 7, 2012 – Board Meeting
  
- September 19, 2012 – Training Program Review Committee Meeting
- September 20, 2012 – Board Meeting
  
- December 5, 2012 – Training Program Review Committee Meeting
- December 6, 2012 – Board Meeting

Ms. Gillespie provided a handout on the activities of the Office of the Common Interest Community Ombudsman, including statistical information on complaints filed with the Ombudsman's office. Specific information included:

**Ombudsman's Report**

- The number of complaints filed.
- The number of phone calls received.
- The number of emails received.
- The types of complaints received, including:
  - Association board actions – lack of notice of board meetings, lack of access to books and records, no method of communication, assessments, due process, parking, covenant enforcement, maintenance, and/or matters concerning ethics and codes of conduct;
  - Misrepresentation during time-share sales presentation; and
  - Declarants not maintaining property, not transferring control, and/or not paying assessments.

Ms. Henshaw provided a revised copy of statistical information regarding licensing and registration processing activities for May 2011. Specific information included:

**Licensing / Registration Statistics and Update**

- The number of new applications processed;
- The number of annual reports and renewals processed;
- The number of phone calls and emails handled; and,
- The current regulant population segregated by program.

In addition to the most recent month available, data from one year ago is provided for comparison purposes.

Ms. Henshaw also discussed several issues that staff has encountered related to manager licensing that may need to be addressed through the regulatory review process. Specific items include provisions related to updating employee dishonesty policy and fidelity bonds and prohibited acts. Ms. Henshaw stated that draft language will be prepared for the Board to consider at its next meeting.

Ms. Henshaw provided the Board a copy of the most recent financial statement for informational purposes. Also, copies of the financial statements for the Common Interest Community Management Recovery Fund for the months ended on March 31 and April 30, 2011, were provided. Ms. Henshaw advised that the statutory mandate that requires a minimum of \$150,000 in the Recovery Fund by July 1, 2011, was achieved as of March 31, 2011.

**Board Financial  
Statements**

The Board previously requested that staff compile a calendar of the common interest community-related events and dates that staff and the Ombudsman attends. The requested information was provided to the Board with the agenda package for information purposes only.

**Staff Event  
Calendar**

Ms. Trigiani expressed appreciation to Mr. Dixon for supporting Ms. Henshaw's attendance at the Community Associations Institute Annual Conference in May. In addition, Ms. Henshaw thanked the Board members for coming to Richmond to attend the Fair Housing Training meeting in April.

The Board members were reminded to complete their conflict of interest forms and travel vouchers.

**Conflict of Interest  
and Travel Voucher  
Forms**

There being no further business, the meeting was adjourned at 2:53 p.m.

**Adjourn**

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Lucia Anna Trigiani, Chair

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Gordon N. Dixon, Secretary